IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1181 of 1995

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRUTBHAI MAKANBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1181 of 1995

MR BS SUPEHIA, Advocate for the Appellants

MR KT DAVE ADDL.PUBLIC PROSECUTOR for the Respondent

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI FOR THE COURT)

#. The appellants who have been convicted for the offence of murder and imposed sentence of imprisonment for life by the learned Additional Sessions Judge, Surat, on 8.12.95 in Sessions Case No. 161 of 1994, have preferred this appeal against their conviction and sentence.

#. The prosecution version in brief is that, on 25th April, 1994 in the evening at about 7.00 O'clock, these three accused persons, with a common intention to cause death of Raman, came with lethal weapons and attacked Raman, during which the accused no. 2 gave a blow by the reverse side of the Dhariya, the accused no. 3 gave a stick blow, and the accused no. 1 inflicted the fatal knife blow on his chest, and thereby, the accused no. 1 committed an offence under Section 302 of the I.P.C., and, the accused nos. 2 and 3 under Section 302 read with Section 34 of the I.P.C. There were also charges framed under Sections 323, 504 read with Section 34 of the I.P.C. with which we are not concerned in this appeal, since no conviction was recorded in respect thereof.

#. The prosecution version rests on the deposition of the four eye witnesses and the trial court accepting their version, came to a finding that these three accused persons in furtherance of their common intention killed Raman by a conjoint attack causing his death by the knife blow inflicted by the accused no. 1 that pierced the chest right into the heart of the deceased.

#. The facts which have come out in the deposition exh. 9 of the complainant-Bhikhiben Manilal, P.W. 1 who was the sister of the deceased show that on 24th April, 1994 in the evening at about 8.00 p.m. when her brother Raman had come to meet her, since their parents were at her house, there was a quarrel between the accused no. 2 Chiman and his wife who were residing, in the opposite house. Her brother, followed by her, went there and tried to pacify the accused no.2-Chiman. Thereupon, Chiman told him not to interfere in their quarrel. This witness persuaded her brother to return to her house. After this incident, Raman had gone away to the field where he was a watchman. Thereafter, on the next day i.e. on 25th April, 1994, Raman had come to her house again to meet their parents at 12.00 Noon. At that time, the accused no.2-Chiman while passing near their house, started abusing Raman, who told him not to abuse, explaining that he had only tried to pacify him and not told him anything else. Despite this, Chiman came and

had a scuffle with him, but the husband of this witness separated them. At that time, the accused no. 2-Chiman told Raman that for the time being he was saved, but when he would meet him alone, he will kill him. The accused no. 2 thereafter, went away and this witness sent her brother to the field. Thereafter, on that very day, at 7.00 O'clock in the evening, she had gone to the house of her brother to inquire whether her brother had gone to the village fair. She met her brother, her sister-in-law Manu and their son Balvant there. While she was inquiring about the things they had purchased from the fair, the accused no.2-Chiman, armed with a Dhariya, the accused no.1-Amrat, armed with a knife and the accused no.3-Ramesh, armed with a stick came there, and started quarreling with her brother. Her brother started running towards the village. His son Balvant who was about 9 to 10 years of age also started running. All the three accused chased Raman and they caught him up near Asraf Sardar's mango orchard, and started beating him. She has stated that at that time, the accused no. 2 gave a blow with the reverse of the Dhariya and the accused no. 3 gave a stick blow. Raman fell down, and, at that time, the accused no.1-Amrat gave a knife blow to him on the left side of his chest. She has stated that they were watching the incident from a distance and did not go nearer for the fear of being attacked. According to her, witnesses Gita and Dhanu had also seen the incident. Balvant who had also seen the incident, ran away when the accused tried to pursue him. In her cross-examination, she has stated that the accused nos. 1 and 2 were brothers and the accused no. 3 was son of their sister. The FIR exh. 10 shows that it was recorded in the evening on 25.4.1994 soon after the incident took place. It also refers to the earlier incident of 24.4.94, the incident that took place at noon time on 25.4.94, and the incident in the evening in which Raman was killed. On all material particulars, the FIR fully supports the version of this witness.

#. Manuben, wife of Raman, in her deposition, exh. 14 has deposed that, on the date of the incident, at about 7.00 O'clock, these three accused persons, armed with weapons, the accused no. 2 with a Dhariya, the accused no. 3 with a stick and the accused no. 1 with a knife, started beating her husband who ran towards the village. All the three chased him. Her son Balvant had also started running. Near Asraf Sardar's mango orchard, they caught him and started beating him. She has also stated that her sister-in-law Bhikhi (who is the complainant), was also present and she had seen the incident. She has stated that the accused no. 1 gave a knife blow on the

chest of her husband. Thereafter, all the three accused had run away. Her husband was alive for about half an hour. Dhanu and Gita also witnessed the incident. She also has stated that, because, her husband had tried to intervene in the quarrel between the accused no.2-Chiman and his wife, this incident had taken place. There is nothing brought out in her cross-examination which would create any doubt against her version.

#. Even Gita in her deposition exh.17 has clearly supported the prosecution version on all material particulars, when she states that the incident took place in the evening at 7.00 O'clock on 25.4.94 when she had seen the three accused persons chasing Raman. She has stated that after they caught up with Raman, the accused no.2-Chiman gave a blow with the reverse of the Dhariya on the back of Raman and the accused no. 3 gave a stick blow to him on the back, and thereafter, the accused no. 1 gave a knife blow on the chest of Raman. All the accused thereafter ran away. Raman fell down on the spot. This witness had no reason to falsely implicate any of the accused persons. Dhanu, mother of this witness has in her deposition exh. 16 supported the prosecution version that these three accused had chased Raman and given blows to him at Asraf Sardar's orchard, the accused no. 2 with a Dhariya, the accused no. 3 with a stick and the accused no. 1 with a knife on his chest.

#. The depositions of the eye witnesses establish beyond any scope of reasonable doubt that, due to the intervention of the deceased in the quarrel that took place between the accused no.2-Chiman and his wife on 24th April, 1994, the accused no. 2 had got enraged and in the noon time on 25.4.94, he had abused Raman and tried to assault him, and when separated by the husband of the complainant, he had threatened to kill him when found alone. It is established beyond any shadow of doubt that, in the evening of 25th April, 1994, all the three accused came armed with lethal weapons to the hutment of Raman, where his wife and sister were present. They straightway started assaulting him and when, with a view to save himself, Raman started running towards the village, they chased him and inflicted blows with their weapons. The accused no. 1 had given the fatal knife blow on his chest that pierced even a portion of the heart, resulting in the death of Raman. The post-mortem report, exh. 12 proved in the deposition of Dr.Desai has been relied upon to show that the injury on the chest of the deceased could be caused by knife, muddamal article

no. 8 and that injury was sufficient in ordinary course of nature to cause death of the deceased. The medical expert has referred to the internal injuries corresponding to external injury caused by the knife which show that a portion of the heart of the deceased was cut. The minor inconsistencies in the version of the witnesses do not at all affect the substratum of the prosecution case.

#. The learned counsel appearing for the appellants submitted that the appellant no. 1 had caused only one injury, and, therefore, the case did not merit his conviction under the provisions of Section 302 of the I.P.C. He also submitted that the medical evidence did not support any injury by the reverse side of a Dhariya or a stick, which are attributed to the accused nos. 2 and 3, and, therefore, these two accused persons could not be convicted for the offence under Section 302 read with Section 34 of the I.P.C. He placed reliance on the decision of the Supreme Court in Jagtar Singh and anr. v. State of Punjab, reported in (1999) 2 SCC 174, in which the deceased had died 16 days after the incident and the medical evidence showed that the death was caused by septicaemia which was due to head injury which was sufficient in ordinary course of nature to cause death; and the conviction of the accused who had caused head injury under Section 302 of I.P.C. was upheld. However, as regards the conviction of the two other accused, one of whom had given a blow with a stick on the ankle of the deceased, the Court was of the opinion that their conviction under Sections 302 r.w. Section 34 and Section 307 r.w. Section 34 of the I.P.C. could not be sustained as it could only be stated that there was an intention to cause grievous hurt and not to cause death.

#. It would be noticed from the decision in Jagtar Singh (supra) that it was rendered in context of the facts which were quite different from the facts of the present case. In para-8 of the judgment, the Court observed that undoubtedly, the appellants had gone together to the house of the deceased armed with deadly weapons and attacked him, but according to the evidence of the two eye witnesses, Jagtar Singh assaulted Naib Singh on his left ankle with the weapon he was carrying. It was held that from this circumstance and the other attending facts and circumstances appearing on record, it can only be said that Jagtar Singh intended to cause grievous hurt to Naib Singh and not to cause his death.

##. In the present case, the seat of injury and the force with which the knife blow was given by the accused

no.1, clearly show that he intended to cause death of Raman. Both, the nature of injury and the weapon with which the blow was given are eloquent of this intention. The blow that he gave was precise and it penetrated till the heart and was the direct cause of the death of the deceased. Therefore, there is no substance in the contention that, because, the accused no. 1 gave only one knife blow, it would not amount to an offence under Section 302 of I.P.C.

##. The manner in which the incident took place in a concerted way in which all the three accused persons participated, clearly shows that the knife injury was caused to Raman by the accused no. 1 in furtherance of the common intention of all the three accused to cause his death. The previous day's intervention by Raman to pacify the accused no. 2 who was quarreling with his wife was taken as an affront by the accused no. 2, who on the next day threatened to kill Raman if found alone and in the evening, the accused nos. 1 and 2 who are real brothers along with their nephew the accused no. 3, armed with lethal weapons came to the hut of Raman which shows the concerted manner in which they acted. They immediately pounced on him and when Raman was trying to save himself by running towards the village, they chased him with these weapons which also shows that they wanted to finish him off. After catching up with him, they started beating him and the accused no. 1 in that process inflicted the knife blow. The course of the conduct of all the three accused persons clearly shows that there was a prior meeting of mind between them and that all of them participated in the act of assaulting Raman, when the accused no. 1 gave the fatal blow with knife which was in his hand. The accused were closely related, and they came together with the weapons in their hands, with the purpose of killing Raman and accomplished it by chasing him and causing his death and thereafter ran away together. It is hardly material in the background of the positive evidence of the eye witnesses, that the medical evidence did not disclose injuries which were caused by the reverse of the Dhariya blow and the stick blow on the back of the deceased. The common intention of all the three accused was evident from the pre-planned manner in which they attacked Raman and the fatal blow that was given by the accused no. 1 was clearly attributable also to the accused nos. 2 and 3 who had actually participated in the crime. We, therefore, do not find any substance in the contention that there was no common intention to cause death of Raman so far as the accused nos. 2 and 3 are concerned.

##. We agree with the reasoning adopted and findings

reached by the trial court. The appeal is, therefore, dismissed.

[J.N. BHATT, ACTG. C.J.]

[R.K. ABICHANDANI, J.]
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